

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
Amendment of Parts 1, 21, 73, 74 and 101 of the)	WT Docket No. 03-66
Commission's Rules to Facilitate the Provision of)	RM-10586
Fixed and Mobile Broadband Access, Educational)	
and Other Advanced Services in the 2150-2162)	
and 2500-2690 MHz Bands)	
)	
Part 1 of the Commission's Rules – Further)	WT Docket No. 03-67
Competitive Bidding Procedures)	
)	
Amendment of Parts 21 and 74 to Enable)	MM Docket No. 97-217
Multipoint Distribution Service and the)	
Instructional Television Fixed Service)	
Amendment of Parts 21 and 74 to Engage in Fixed)	
Two-Way Transmissions)	
)	
Amendment of Parts 21 and 74)	WT Docket No. 02-68
of the Commission's Rules with Regard to)	RM-9718
Licensing in the Multipoint)	
Distribution Service and in the)	
Instruction Television Fixed Service for the)	
Gulf of Mexico)	

To: The Commission

**INDEPENDENT MMDS LICENSEE COALITION'S
REPLY TO OPPOSITIONS**

The Independent MMDS Licensee Coalition ("IMLC") hereby submits this brief reply to oppositions to its Petition for Reconsideration filed by Wireless Communications Association International ("WCA") and Nextel Communications (Nextel"). IMLC proposed in its Petition for Reconsideration that the Commission should slightly reshuffle the guard band channels to be assigned under the new band plan so as to associate guard band channels, where possible, with contiguous spectrum assigned to the same licensee. Contrary to the opponents'

suggestions, this revision can only benefit the licensees involved while doing no harm whatsoever to other licensees. IMLC does not propound the view that four MHz of guard band are never necessary; rather, it believes, and Nextel and WCA would surely agree, that *in some cases* four MHz is unnecessary.

For purposes of providing a guard band between the high power MBS channels and the low power LBS and UBS channels, it is essentially immaterial which channels are assigned to which licensees – if the guard band is necessary to protect the low power channels, *no one* will be able to use them. However, the Commission recognized, as does IMLC, that there may well be situations where the full guard band is not necessary to protect adjacent low power channels from interference. That is presumably why the Commission has assigned specific guard band channels to specific BRS/EBS licensees: so these licensees can use the channels if the opportunity presents itself. Such a situation could arise, for example, where one licensee controls most of the spectrum in a market but a few channels are either vacant (unlicensed) or dark, where the MBS channels are actually being used in a low power configuration and thus no (or less) guard band is needed, or where one entity controls all of either the upper or lower band spectrum and can therefore reduce guard band requirements by internal system engineering. In all of these situations, the spectrum assigned for guarding purposes would not actually be needed for that purpose. As originally adopted by the Commission, isolated guard band channels which are not adjacent to operational channels would sit there unneeded but also unused. This is simply a waste of a precious resource with no attendant benefit.

IMLC's proposal starts from the proposition that usage of guard band channels must not create interference to any other licensee, as presently required by Section 27.1222 of the rules. WCA need have no fears on that score. Full protection would have to be provided to the main

channels at all times. IMLC's proposal merely makes it possible (under conditions that will very likely occur) for the guard bands to be put to use when interference constraints are not a factor. As presently configured, the guard band channels are separated from any of the main channels with which they might usefully operate. IMLC suggests that the channels be allocated so at least some of them are adjacent to main channels with which they might be joined. Without any rearrangement at all of the band plan for the main channels, the guard band channels could be reshuffled to situate the three D-related guard band channels next to the D3 channel, the A-related guard band channels next to the A4 channel, and the E-related guard band channels next to the E4 channel (assuming these all were part of four-channel groups to begin with). The A, E and D licensees could then use this spectrum, if possible, in the kind of dynamic and flexible frequency use arrangements which we anticipate will be common in the new BRS/EBS paradigm. Absent this simple expedient, these isolated one-MHz bits would in most cases have to languish unused. Though it may not know it now, Nextel may one day be thankful to have access to these chunks of spectrum.

Contrary to WCA's suggestion, the Commission's present rules do not lay out permissible operational parameters for guard band channels – other than that they must not cause interference. New Section 27.50(h) specifies power limits for stations operating in the LBS, UBS and MBS bands, but it establishes no limits whatsoever for the guard band channels (which do not fall into any of these categories). IMLC proposed that when guard band channels are used, they should be subject to the same power limits as the main channels with which they are associated. This both fills in a lacuna in the rules and actually provides a

greater degree of protection to other licensees than the rules as presently written.¹

Nextel suggests that allocation of the guard band channels should remain “diffuse” as a means of stimulating “consensus-building” among the spectrum users. The diffusion of spectrum in the MDS/ITFS bands is precisely what the Commission’s present reform is intended to eliminate. In more than twenty years of trying, ITFS and MDS licensees were not able to achieve sufficient “consensus” to put the main channels to constructive use; there is no reason to think that anything will change now. At least in the proposal presented here, some channels can be put to use immediately; there will be plenty of opportunities for consensus-building on other elements of the transition process.

IMLC’s proposal should be adopted since it permits fallow spectrum to be put to use only in circumstances where there is no potential for interference to other licensees. Where there is detriment to no one and a gain of three MHz of useful spectrum to some, the virtue of this proposal is obvious.

Respectfully submitted,

Independent MMDS Licensee Coalition

By _____/S/
Donald J. Evans

Fletcher, Heald & Hildreth, PLC
1300 North 17th Street, 11th Floor
Arlington, VA 22209
703-812-0400

March 9, 2005

Its Attorney

¹ Section 27.1220 authorizes licensees to transmit utilizing bandwidths greater than the standard channels, but it requires “all power spectral diversity requirements set forth in this part” to be met. Since there are no power spectral diversity requirements for the guard band channels, it is unclear how the rule would apply where guard bands are integrated into contiguous MBS or LBS/UBS spectrum.

CERTIFICATE OF SERVICE

I, Deborah N. Lunt, a secretary with the law firm of Fletcher, Heald & Hildreth, P.L.C., hereby state that true copies of the foregoing Reply to Oppositions was served by first class mail, postage prepaid, this 9th day of March, 2005, to the following:

Paul J. Sinderbrand
Robert D. Primosch
Nguyen T. Vu
Wilkinson Barker Knauer, LLP
2300 N Street, NW, Suite 700
Washington, DC 20037-1128
Counsel for
Wireless Communications Association International, Inc.

Robert S. Foosaner
Lawrence R. Krevor
Trey Hanbury
Nextel Communications
2001 Edmund Halley Drive
Reston, VA 20191

/S/
Deborah N. Lunt